Supreme Court, U.S.
FILED

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NO. ____ OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

HOLLY GRACE WINGFIELD,

Petitioner,

-v-

NEVILLE MASSIE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GLOYD L. McCOY
COYLE & McCOY
119 N. Robinson, Suite 320
Oklahoma City, Oklahoma 73102
Telephone: 405/232-1988
Telecopier: 405/272-9859

COUNSEL FOR PETITIONER

49 pp

QUESTIONS PRESENTED

1. Was the evidence presented at Holly Wingfield's state trial for murder sufficient to satisfy the standard enunciated in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979)?

2. Can a federal appellate court sustain a state conviction on habeas review by making findings that conflict with the findings of the state jury?

3. Can a federal habeas appellate court uphold a state conviction despite the fact that the federal district court makes a specific factual finding that the jury's verdict was based on an improper legal standard and the appellate court fails to find that that factual finding was clearly erroneous?

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To: The Honorable Chief Justice and Associate Justices of the United States Supreme Court

Petitioner, Holly Wingfield, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in this case on the 19th day of August, 1997.

OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is published as Wingfield v. Massie, 122 F.3d 1328 (10th Cir. 1997). The opinion is attached as Appendix "A." The order of the Tenth Circuit denying rehearing was not published and is attached as Appendix "B." The judgement of the lower court which granted habeas corpus relief is attached as Appendix "C."

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on August 18, 1997. A timely petition for rehearing and suggestion for rehearing en banc was filed. The rehearing request was denied on September 10, 1997. Justice Breyer has subsequently granted Ms. Wingfield until January 8, 1998 to file her Petition for Writ of Certiorari. Jurisdiction of this Court is imposed pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend V provides in pertinent part:

> No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

U.S. Const. Amend XIV provides in pertinent part:

> Section 1 . . . No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States;

> nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person with its jurisdiction the equal protection of the laws.

Okla. Stat. Ann. tit. 21, § 701.7A, the Oklahoma first degree murder statute provides:

> A person commits murder in the first degree when that person unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Okla. Stat. Ann. 21, § 172 provides:

> All persons concerned in the commission of crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present are principals.

STATEMENT OF THE CASE

Holly Wingfield, at the age of sixteen, was charged with murdering her father, her stepmother and her eighteen-month-old sister, Crete. She was acquitted of murdering her father and stepmother. However, the Oklahoma jury convicted her of murdering her sister.

At the trial, the evidence showed that Holly's brother, Ty, then age nineteen, was the person who killed the members of the Wingfield family. Ty Wingfield had

pled guilty in order to avoid receiving the death penalty. The State of Oklahoma wanted two convictions so Holly was tried before a jury. Although Holly was the person on trial, the prosecution's case continually alluded to the actions of her brother.

During the opening statement, the state prosecutor said:

> The evidence will be that they talked and they didn't know what to do about Crete, the little two year old girl. Finally Ty made up his mind and he went and got the 22 and he called the baby and shot her.

(Tr. 278)(emphasis added)

At trial, Ty Wingfield admitted that Holly was not with him when their younger sister was killed. (Tr. 641) He testified that Holly had nothing to do with the killings:

> Q. Mr. Wingfield, to the best of your knowledge Holly Wingfield had nothing to do with these killings, did she?
>
> A. To the best of my knowledge.

(Tr. 661)

Ty Wingfield testified that Holly begged him not to kill Crete. (Tr. 662, 671) Various witnesses testified at trial that Ty Wingfield had consistently admitted that he alone was responsible for the killing of the child. (Tr. 306, 308, 331, 361, 391, 395, 405, 410, 420-21, 424-25, 425-26). Ty Wingfield also testified that he would have killed Holly but that he "[r]un out of bullets." (Tr. 676)

After being denied relief in the Oklahoma appellate court, Ms. Wingfield, pursuant to 28 U.S.C. § 2254 filed for habeas corpus relief in the United States District Court for the Northern District of Oklahoma, Case No. 96-C-255-K. The Honorable Terry C. Kern, Presiding Judge of the Northern District of Oklahoma, entered an order granting the writ of habeas corpus. Judge Kern ruled that the evidence was insufficient to sustain the murder conviction.

Judge Kern made extensive factual findings regarding the case. Among the relevant factual findings were the following:

> 1. Prior to the murders, Ty Wingfield admitted to using marijuana, crank, valium and alcohol.
>
> 2. Holly was present at the murders. At her brother's direction she help load the bodies on a truck and attempted to clean up the bloody mess in the house.
>
> 3. At her brother's instruction, Holly wrote two checks, one of which was apparently cashed.
>
> 4. Holly was instructed by her brother to follow him to the home of Joy Mauldin in Hawsville, Texas. It was Ty's idea to go to Texas because he had made arrangements to sell the truck in order to sell drugs. He needed Holly to drive the other vehicle.
>
> 5. At the preliminary hearing, Wendy Mauldin testified that Holly told her "she had Crete in the kitchen and Ty walked in there and she told Ty not to do anything but he called Crete into the other bedroom and she said she couldn't stop him."

6. Wendy Mauldin testified that Holly had told her that she was scared at the time her brother killed Crete.

7. At the May 20, 1988 deposition and at Holly's jury trial, Ty testified that he was told at the beginning of the case that unless he implicated his sister the State would seek the death penalty.

8. Following a seven day jury trial, Holly was acquitted of murdering her father and stepmother.

9. Ken Toon, a deputy sheriff from Texas, said that Ty admitted that he had killed Clint, Louise and Crete Wingfield.

10. Ty admitted that he had testified at the preliminary hearing that Holly had made some comments about killing the parents but only when she got mad, only as idle talk, but had never asked him, nor planned with him, to kill them.

11. Ty agreed that Holly had not encouraged him to shoot their father. He further admitted he misinterpreted Holly's statement whether he was "going to do it" because of his agitation and loss of control due to drugs.

12. Crete was killed outside the bedroom in the hallway. Holly was not with him at the time.

13. Ty admitted that it was his idea to go to Texas and that he needed Holly to drive the van to Texas so he could sell it. Ty also admitted that he directed Holly to write the checks that were cashed.

14. Ty told his uncle that Holly had begged him not to kill the child.

15. Ty said that Holly had discouraged him from killing the child, saying "No."

16. The prosecutor asked Ty why he had not killed Holly. He replied, "run out of bullets."

17. Donna Lewis testified that Holly had taken the child to the kitchen. Holly did not want Ty to kill Crete. Ty called for Crete and as the child walked around the corner, Holly heard a shot and "figured that Ty had killed Crete."

18. Crete went home to Ty on her own when Ty called her name.

19. While Ty may have ultimately told Holly that he would have to kill Crete, there was uncertainty about his intentions.

20. There was no plan or scheme between Holly and Ty to kill Crete Wingfield.

21. At the time Ty called for Crete, there was "still that glimmer of home" that Ty would not kill Crete.

22. The Wingfields lived in rural Craig County; no neighbors lived close by; Holly was scared and probably in shock; the killings all occurred in a short time span.

23. Holly's failure to show emotion after the killings is consistent with shock.

Most importantly, Judge Kern made a factual finding that the jury had based their verdict on impermissible factors. Judge Kern wrote:

> Whatever Petitioner did after the commission of the murders is not sufficient to convict her of aiding and abetting the murder of Crete. Even the jury was confused about the application of the law to the evidence of what Petitioner did after the commission of the murders. [The jury sent out a question] "If Holly had nothing at all to do with the actual killing of her dad, mother and sister, but consented to the disposing of the bodies, the cleaning up, putting the baby in the bag, packing and leaving -- not reporting Ty when they separated -- does this constitute abiding [sic] & abetting?"

Dist.Ct.Op. at 25-26.

Most importantly, Judge Kern made the following finding regarding the jury's verdict:

> [T]he evidence reveals that Petitioner wanted to protect Crete from the moment Ty shot his father. Petitioner grabbed Crete and ran to the living room, then to the kitchen where she tried to comfort Crete. When Ty told Petitioner he was going to kill Crete, she begged him not to kill the child. Even taking Ms. Randall's comments as true, there is still no evidence of a plan or scheme to kill Crete. The Court concludes from the jury's questions and the State's argument that the verdict of

> the jury may well have been based on the fact that Petitioner did nothing to save Crete's life. This, however, morally wrong, does not constitute first-degree murder under Oklahoma law.

Dist.Ct.Op. at 29 (emphasis in original)

The Tenth Circuit, despite Judge Kern's specific factual findings, reversed the grant of habeas corpus relief, saying that there was evidence to support the conviction:

> [W]e believe there was sufficient evidence from which a reasonable jury could have inferred that Holly had personally intended the death of Crete. First, Ty answered "yes" to the question, "Ty, prior to the time that your father and Louise and your little step sister were killed, was there any time that Holly talked to you about killing them? (emphasis added). Although the reference to "them" might have been intended to refer only to Clint and Louise, the most obvious meaning of the word "them" in the context of this question includes Crete, and the jury could have found from this testimony that Holly had intent to kill Crete when the murders occurred. Second, and most compelling, through the testimony of Sally Randall, that Ty told her he was going to kill Crete and that she then told Crete to "go to Ty." The jury could have found that statement to Crete was direct involvement by Holly intending to cause Crete's death. Third, there was ample evidence that Holly showed

> no remorse at the death of Crete and that she helped dispose of Crete's body. In conjunction with the other evidence, a jury could infer from Holly's lack of remorse that the killing of Crete was consistent with her intent and desires.

122 F.3d at 1333.

Ms. Wingfield sought en banc review. The request was denied. Ms. Wingfield now petitions this Court for a Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

I.

HOLLY WINGFIELD DID NOT MURDER HER SISTER; THE EVIDENCE SHOWED THAT HER BROTHER WAS GUILTY; THE TENTH CIRCUIT'S CONCLUSION THAT HOLLY KILLED HER SISTER IS INCONSISTENT WITH THE JURY'S FINDING THAT SHE DID NOT KILL HER MOTHER AND FATHER; THE DECISION OF THE TENTH CIRCUIT CONFLICTS WITH A DECISION OF THE NINTH CIRCUIT COURT OF APPEALS.

The Tenth Circuit's decision is in conflict with a decision from the Ninth Circuit Court of Appeals. In Mitchell v. Prunty, 107 F.3d 1337 (9th Cir. 1997), the State of California was attempting to show that a gang member had aided and abetted in a murder case when he let fellow gang members into his apartment with the knowledge that they intended to use it to facilitate a murder. The California

law is the same as the Oklahoma law with regard to being an aider and abettor.

The Ninth Circuit in Prunty rejected the argument. That court said, "[T]here is no way Mitchell could have admitted fellow gang members into his apartment with the intent to commit murder. Thus, even if Mitchell facilitated Judabean's murder by making the landing of his apartment building available to the assailants, this actus reus was not coupled with the necessary simultaneous mens rea." 107 F.3d at 1341 (footnotes omitted; emphasis in original). Here, assuming that Holly told Crete to "go to Ty", Holly's actus reus was not coupled with the necessary simultaneous means rea. She had no intent. She did not want her sister dead. Regardless of Holly's words, the child's fate was sealed. The Tenth Circuit ignored this argument in their opinion.

The Tenth Circuit's decision is in conflict with Mitchell v. Prunty in another respect. The opinion relies on a statement by Ty Wingfield that he and Holly had talked about killing them. That statement has no foundation. The jury rejected the conclusion that Holly had intended to kill her parents. She was found not guilty. Obviously, the jury did not give any factual credence to anything that led one to believe that she wanted to kill them. If this evidence was rejected as to the parents, so too must it be rejected with regard to Crete. In Mitchell, the Ninth Circuit said, "It is not reasonable to affirm a conviction based on testimony that is clearly rejected by the verdict." 107 F.3d at 1339 n. 3.

Holly was charged with murdering her parents. The jury found her not guilty. Obviously rejecting the idea that she had discussed killing them. Although this Court has sanctioned inconsistent verdicts, the Court should grant

certiorari here to discuss just how inconsistent verdicts can be. See United States v. Infelise, 813 F.Supp. 599 (N.D. Ill. 1993)(inconsistent verdicts may require setting aside a conviction where those verdicts are based on charges with "virtually identical elements"). The Tenth Circuit's failure to consider the jury's findings with regard to the other charges as proof of Holly's innocence justifies review of this case.

II.

A JURY'S VERDICT CANNOT BE UPHELD WHEN A DISTRICT COURT'S FINDING THAT AN IMPERMISSIBLE FACTOR WAS THE BASIS OF THE VERDICT AND THE FINDING HAS NOT BEEN FOUND TO BE CLEARLY ERRONEOUS.

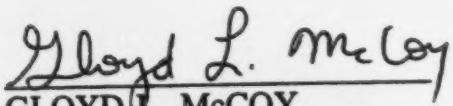
The district court judge made a factual finding that the Oklahoma jury found Holly guilty because they felt she owed a duty to try and save Crete Wingfield. Dist.Ct.Op. at p. 24-25. The Tenth Circuit opinion did not address this important finding. Holly had no legal duty to protect her sister. See Knox v. Commonwealth, 735 S.W.2d 711 (Ky. 1987); Pope v. State, 396 A.2d 1054 (Mass.App. 1979). A person cannot be lawfully convicted under the standards of due process if there was no violation of any duty.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Petition for Writ of Habeas Corpus be granted. This Court's duty to administer justice occasionally requires busy judges to engage in a detailed review of the particular facts of a case, even though the Court's labors may not provide posterity with a newly minted rule of law.

Kyles v. Whitley, 514 U.S. 419, 455, 115 S.Ct. 1555 (1995)(Stevens, J., with whom Ginsburg, J. and Breyer, J., join). A review of this case's facts should show that, as expressed by the district court judge in this case, Ms. Wingfield is not guilty of the crime of murder.

Respectfully submitted,
COYLE & McCOY



GLOYD L. McCOY
119 N. Robinson, Suite 320
0klahoma City, OK 73102
Telephone: 405/232-1988
Telecopier: 405/272-9859

COUNSEL FOR PETITIONER